

MONTANA LEGISLATIVE HISTORY

Chapter 525 1922

Bill H 334 S _____ Original bill & history / c

H. Committee on Judiciary

Hearing Date(s) Jan 26 ✓ c

Feb 22 ✓ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) Mar 28 ✓ c

Mar 30 ✓ c

Mar 31 ✓ c

_____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

1 H BILL NO. 334
2 INTRODUCED BY Thorne

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING THE PLEADING
5 OF DAMAGES IN ACTIONS FOR PERSONAL INJURY OR WRONGFUL
6 DEATH."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Claim not to be stated. In an action for
10 the recovery of money or damages for personal injury or
11 wrongful death, the amount thereof may not be stated in the
12 claim for relief, whether an original claim, counterclaim,
13 cross-claim, or third party claim.

14 Section 2. Request for statement of claim. When an
15 action is filed in the district court to recover damages for
16 personal injury or wrongful death, the parties against whom
17 the action is brought may at any time request a statement
18 setting forth the nature and amount of damages being sought.
19 The request shall be filed and served upon the claimant, who
20 shall file and serve a responsive statement as to damages
21 within 15 days thereafter. In the event that a response is
22 not served, the party on notice to the claimant who may
23 petition the court in which the action is pending to order
24 the claimant to serve a responsive statement.

25 Section 3. Claim made in certain circumstances. If no

1 request is made for such a statement setting forth the
2 nature and amount of damages being sought, the claimant
3 shall give notice to the defendant of the amount of special
4 and general damages sought to be recovered:
5 (1) before a default may be taken; or
6 (2) in the event an answer is filed, at least 45 days
7 prior to the date set for the trial.

-End-

INTRODUCED BILL

-2-

HB334

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 316	providing for motor vehicle liability protection for owners & operators as a condition of operation of those vehicles etc.	1-21	E Gunderson	Friday 28th	do not pass	-2-15- 2-23
HB #320	amend & clarify the law relating to comparative negligence. etc.	1-21	Ramirez	Tuesday 25	do pass as amended	1-26
HB #326	to establish training requirements for peace officers	1-21	Lory	Wed. 2nd	do pass as amended	2-7
HB #334	concerning the pleading of damages in actions for personal injury or wrongful death.	1-21	Moore	Weds 26	do pass as amended	2-22
HJR 17	applying to the Congress of the US for the calling of a constitutional convention for proposing an amendment that every human etc.	1-21	O'Connell	Weds 26	do not pass	2-7
HB 353	act concerning the salaries of district judges	1-21	Scully	Weds. 2nd	table indefinitely 2-9	

JUDICIARY COMMITTEE

January 26, 1977

The regularly scheduled meeting of the House Judiciary Committee was held on Wednesday, January 26th at 8:00 A. M. with Chairman Scully presiding. All members were present with the exception of Representative Dussault who was excused and then came in later.

Bills scheduled for hearing were House Joint Resolution #17 and House Bills #313, 243, 334, 354 and 356.

CHIEF SPONSOR REPRESENTATIVE MOORE, District #41 introduced House Bill #334 and spoke in its behalf.

This bill concerns the pleading of damages in actions for personal injury or wrongful death. He introduced Gerald Neeley, representing the Montana Medical Association. He was a proponent for the bill and spoke in favor of it. He said the bill has a number of points of merit. He talked about the high cost of the insurance and that only 16% of the premium dollar ever filters down to the patient. He explained the bill, and discussed the bar association commission study that had been done. He asked the committee to support this bill.

PROPOSER, JOHN CAVIN, Attorney, Billings, Montana. He said the Billings Bar Association was in support of this bill.

OPPONENT, KENT PARCELL, representing the State Bar of Montana said the Bar Association supports this bill.

OPPONENT, TOM DOWLING, representing the Montana Trial Lawyers Association said they strongly oppose this bill. He said the bill is trying to revamp the entire tort system. If you are going to do that then how do you handle the default. There should be an amendment, as to jurisdiction of limits.

REPRESENTATIVE COURTNEY asked of Mr. Dowling, how many malpractice cases are heard each year. He said he did not have the figures. A survey had been done but it was not broken down, it only makes comparisons. There was then some discussion about how many were settled, etc.

REPRESENTATIVE RAMIREZ mentioned that on the default it indicated that notice has to be given and how would they do that.

Mr. Neeley said you would have to give him notice of claim. There was considerable discussion about how this would be done.

REPRESENTATIVE RAMIREZ asked if the new changes in the Montana Code of Civil practice did not require that they reveal the insurance policy limits, and Mr. Neeley said, yes, it had been passed by the legislature.

The hearing closed on House Bill #334.

THE HEARING OPENED ON HOUSE JOINT RESOLUTION #17.

PROponent, REPRESENTATIVE O'CONNELL, District #34, explained the purpose of the bill, called the right to life amendment. She mentioned that the bill requests that the state apply to the Congress of the United States to call convention for the purpose of proposing an amendment to the United States Constitution, in the effect that the right to life guarantee that every human being subject to the jurisdiction of the United States or any state is, from the moment of fertilization, a person with the right to life.

No other proponents.

OPponent, LINDA SANDMAN, Representing the Women's Political Caucus, asked the committee to look at how this bill would work. She said there are two routes that can be taken for a constitutional amendment and that this route was wrong. She opposed the bill on that stand.

REPRESENTATIVE O'CONNELL closed with the remark that "everything worth getting is worth fighting for".

The hearing closed on House Joint Resolution #17.

THE HEARING OPENED ON HOUSE BILL #243.

CHIEF SPONSOR, REPRESENTATIVE KIMBLE, District #94, stated that this bill would permit a person to drive if their employment required it, even though their drivers license might be revoked for a charge of driving while intoxicated, or under the influence of drugs. It would provide for a special permit, but only when providing proof of condition of employment. He said they should not be permitted to drive except in the course of their employment.

No other proponents.

OPponent, CAPTAIN TOOLEY, of the Montana Highway Patrol, spoke against the bill, but he said it was only because there was another bill that he felt was better, and that the department feels is better. There was considerable discussion about the judge and the discretion of the judge, etc.

The hearing closed on House Bill #243.

THE HEARING OPENED ON HOUSE BILLS #354 and 356, sponsored by:

REPRESENTATIVE GOULD, District #98. He mentioned that there should be three bills in this package, but one had inadvertently gotten into the Highway Committee but that he asked the Judiciary Committee to withhold any action until they had received House Bill #355, which would be coming over, and that they then consider them all three together.

JUDICIARY COMMITTEE

EXECUTIVE SESSION

February 22, 1977

The executive session was called to order by Chairman Scully, on Tuesday, February 22, 1977 at 7:00 a.m, in room 436 of the Capitol Building, Helena, Montana. All members were present with the exception of Representatives Day, Dussault, and Teague.

HOUSE BILL #777:

REPRESENTATIVE LORY moved "do pass".

REPRESENTATIVE ROTH moved a substitute motion, "do not pass".

A roll call vote was taken and the motion carried 9 to 6 with Representative Lory voting "no".

HOUSE BILL #778:

REPRESENTATIVE LORY moved "do not pass".

The motion carried with Representative Holmes voting "no".

Representative Dussault came in.

HOUSE BILL #774:

REPRESENTATIVE DUSSAULT moved "do not pass".

The motion carried with the vote unanimous.

HOUSE BILL #705:

REPRESENTATIVE SEIFERT moved "do not pass".

REPRESENTATIVE DUSSAULT moved to amend on page 3, line 3.

After some discussion the amendments carried with the vote unanimous.

In going back to the original motion of "do not pass" the motion carried with Representatives Kennerly and Dussault voting "no".

Representative Day came in.

HOUSE BILL #466:

REPRESENTATIVE RAMIREZ moved "do not pass".

The motion carried with Representatives Day, Holmes and Courtney voting "no".

HOUSE BILL #200:

REPRESENTATIVE RAMIREZ presented proposed amendments from the sub-committee, and moved their adoption. The motion carried.

REPRESENTATIVE RAMIREZ moved "do pass as amended".

The motion carried with Representatives Keyser, Seifert and Courtney voting "no". (copy of amendments attached)

HOUSE BILL #334:

REPRESENTATIVE RAMIREZ moved the adoption of the committee report of the proposed amendments, (adding a new subsection). Motion carried.

REPRESENTATIVE SEIFERT moved "do not pass".

REPRESENTATIVE KEYSER moved a substitute motion of "do pass as amended". The motion carried with the following representatives voting "no". Representatives Courtney, Roth, Seifert, Hand and Day. (attached)

FORTY-FIFTH _____ LEGISLATIVE SESSION
1977
COMMITTEE ON _____ JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
H.B. 310	2-5-77	2-21-77	2-21-77				2-21-77		
H.B. 320	2-16-77	3-15-77	3-24-77				3-24-77		
H.B. 320	Rereferred 3-28-77	3-28-77	3-29-77						3-29-77
H.B. 320	Rereferred 4-2-77	4-2-77	4-2-77					4-2-77	
H.B. 326	2-17-77	3-14-77	3-29-77					3-29-77	
H.B. 334	3-5-77	3-28-77	3-31-77					3-31-77	
H.B. 343	3-2-77	3-16-77	3-16-77				3-16-77		
H.B. 352	3-4-77	3-11-77	3-11-77					3-11-77	
H.B. 355	4-6-77	4-8-77	4-8-77					4-8-77	
H.B. 356	2-21-77	3-25-77	3-31-77					3-31-77	
H.B. 357	4-5-77	Hand 4-7 4-12-77	4-12-77						As amended be NOT 4-12-77
H.B. 363	2-25-77	3-17-77	3-19-77					3-19-77	
H.B. 371	2-25-77	3-17-77	3-19-77					3-19-77	
H.B. 374	3-5-77	3-28-77	3-31-77						3-31-77
H.B. 384	3-9-77	3-10-77	3-10-77					3-10-77	
H.B. 395	2-25-77	3-11-77	3-11-77				3-11-77		

(Use Separate Sheet for Senate, House Bills, and Resolutions)

HOUSE BILL NO. 334

INTRODUCED BY MOORE

A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING THE PLEADING
OF DAMAGES IN ACTIONS FOR PERSONAL INJURY OR WRONGFUL
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Claim not to be stated. In an action for
the recovery of money or damages for personal injury or
wrongful death, the amount thereof may not be stated in the
claim for relief, whether an original claim, counterclaim,
cross-claim, or third party claim.

Section 2. Request for statement of claim. When an
action is filed in the district court to recover damages for
personal injury or wrongful death, the parties against whom
the action is brought may at any time request a statement
setting forth the nature and amount of damages being sought.
The request shall be filed and served upon the claimant, who
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within 15 days thereafter. In the event that a response is
not served, the party on notice to the claimant who may
petition the court in which the action is pending to order
the claimant to serve a responsive statement.

Section 3. Claim made in certain circumstances. If no

request is made for such a statement setting forth the
nature and amount of damages being sought, the claimant
shall give notice to the defendant of the amount of special
and general damages sought to be recovered:

(1) before a default may be taken; or

(2) in the event an answer is filed, at least 45 days
prior to the date set for the trial.

SECTION 4. PERMISSIVE DELIVERY OF STATEMENT. A COPY
OF THE STATEMENT SETTING FORTH THE NATURE AND AMOUNT OF
DAMAGES BEING SOUGHT MAY BE DELIVERED TO THE DEFENDANT AT
THE TIME OF SERVICE OF THE SUMMONS AND COMPLAINT, BUT MAY
NOT BE FILED FOR 20 DAYS AFTER THE COMPLAINT IS FILED.

-End-

THIRD READING

-2-

HB 334

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 28, 1977

The meeting of this committee was called to order on the above date by Senator Turnage, Chairman, at 9:35 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All committee members were present with the exception of Senator Murray who was excused.

WITNESSES PRESENT TO TESTIFY:

Gerald Neely - Montana Medical Assn.
Tom Dowling - Helena attorney
Glen Drake - American Insurance Assn.
Rep. Ramirez - Billings
Roland V. Colgrove - Miles City attorney representing the Custer County Bar and Southeastern Montana Bar Assn.
Jerry T. Loendorf - Montana Medical Assn.
Chad Smith - Montana Hospital Assn. and American Mutual Alliance
Bill Leaphart - Trial Lawyers Assn.

CONSIDERATION OF HOUSE BILL 647:

Gerald Neely, Montana Medical Assn. representative, said that, after lengthy consultation with the Montana Bar Assn. regarding the pretrial panel review approach, the two associations ask that S.B. 402 be substituted for HB 647, with amendments included in S.B. 402, after the enacting clause of HB 647. He explained the proposed amendments to SB 402. (See Exhibit 1)

Next, Senator Towe moved the adoption of the proposed amendments to SB 402 and the amendment of HB 647 by inserting SB 402 following the enacting clause. The motion carried unanimously.

The memorandum written by Colvin H. Agnew, president of the Montana Medical Assn. was presented to the committee for him as he had been detained by a snow storm on the other side of Bozeman Hill and would not be able to get here for this hearing. (See Exhibit 2)

Tom Dowling, an opponent, said that the Montana Bar Assn. put in SB 402, but it has been amended here this morning and made the body of HB 647. The insurance carriers will not participate in this part of insurance coverage. They will withdraw from Montana. There is a joint underwriting association bill to form an association being considered this session. He said that he feared that Aetna would pull out. Therefore, he opposed HB 647 and supports SB 402 as first considered.

Glen Drake, representing the American Insurance Assn. and an opponent to HB 647, said that basically they are in favor of a mandatory review panel. However, they do not believe that this bill makes the decision of the review panel final and binding. He also said that Aetna is a member of the AIA and has no intention of withdrawing from Montana but will try to live with the bill.

Gerald Neely, representing the Montana Medical Assn. and a proponent of HB 647, said that it is very clear that Aetna does not want a bill that is not binding and that, in speaking with the American Insurance Assn. on a number of occasions, they said they would take a long hard look at this legislation if it passed. In terms of time and cost of all available evidence, it would save time for insurance companies.

DISPOSITION OF HOUSE BILL 647:

Sen. Warden moved that HB 647 as amended BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 200:

Gerald Neely, representing the Montana Medical Assn., asked that action be deferred on this bill if the other bill goes through putting SB 402 into HB 647.

Tom Dowling, a Helena attorney, opposed this bill because a long list of people are left out in HB 200. All people should be treated equitably. If SB 402 is passed, he said that HB 200 is unnecessary. (SB 402 was amended and made the body of HB 647)

Greg Morgan, representing the Montana Bar Assn., said that HB 200 is unnecessary if HB 647 as amended is passed. Otherwise they do support HB 200. He asked that HB 200 be held in committee until they see if HB 647 as amended is accepted.

CONSIDERATION OF HOUSE BILL 782:

Rep. Ramirez of Billings, one of the sponsors of this bill, told the committee that it originated with the Montana Medical Assn. and is a collateral source rule. Right now, if a particular suit is brought against a defendant, the complaint can contain loss from bodily injury and elements of damages. The complainant is entitled to recover actual damages. From his own medical insurance or other, he may have received part of his loss, but in this suit he can recover all of his damage. This is a double recovery. The question is whether society can stand this double recovery. He said that section 3 would allow evidence of remarriage to be shown so that a jury would know if the widow of a person who has been killed remarries.

Gerald Neely, representing the Montana Medical Assn., said a repeal of the collateral source rule would bring about considerable impact on rates. They recommend this type of bill.

Greg Morgan, the Montana Bar Assn. representative, said they support favorable consideration of HB 782.

Tom Dowling, representing the Montana Trial Lawyers Assn., an opponent, said that they oppose this bill.

Senate
Judiciary

3/28/77

-3-

Roland V. Colgrove of Miles City, representing Custer County Bar and Southeastern Montana Bar Assn., said they oppose HB 782. He said they say workers compensation is a collateral source. If a person recovers his damages, the board gets its workers compensation back. He showed pictures to the committee of a man severely injured on the job by a 14,000 volt of electricity. Therefore, workers compensation should not be in this bill. Also, a person who gratuitously takes care of a person who is injured should be able to recover from the insurance company. He felt that subrogation should be entirely eliminated because it is wrong. He also said that, because of the remarriage clause in section 3, he would not let a widow who was suing an insurance company, remarry until the lawsuit was over because she has the right to recover. That should not be in this bill either. All the grief and agony she has suffered would be for nothing if she remarried and this bill becomes law. That is not right.

Glen Drake, representing the American Insurance Assn., which is a group of 80 stock owner companies, was the next opponent. He said that they oppose this bill because it would allow the wrongdoer to obtain the benefits of the victim's recovery. He also opposed any modification of the collateral source rule.

Rep. Ramirez was allowed to close on the bill at this time. He said that first, workmens compensation is provided by statute here and it is 100%. This would not bond it. Here it is 50% and the subrogation right is only 50%. If the Veterans Administration attempts to get its money back, this rule would not come into play. He does not understand why the insurance companies oppose this bill except it will make them have to reduce their premiums. People are being compensated twice. He said that he thinks there is a sense of fairness in this type of bill.

After questions by committee members, the hearing on HB 782 was closed.

CONSIDERATION OF HOUSE BILL 334:

Jerry T. Loendorf, a representative of the Montana Medical Assn., explained the bill on behalf of Rep. Moore of Great Falls, the sponsor of the bill. He said that this bill provides for the pleading of damages in actions for personal injury or wrongful death. It has been amended to allow a permissive statement of damages. It is the practice of newspapers in Montana to write up cases involving doctors and professional people. This damages their reputations. This bill will remedy that. However, there is a question of constitutionality because the Constitutional Convention in 1972 provided that the Supreme Court may adopt rules. The statute of 1961 has not been amended. Since 1972, the legislature has enacted many laws affecting the Rules of Civil Procedure. Another argument made against this bill was how do you tell which court this will be in -- the justice court has cases up to \$1,500 now. He said that he thinks that in this bill the defendant does have a reasonable way to estimate the amount of damages.

Greg Morgan of the Montana Bar Assn. said they were in support of this bill.

Tom Dowling appeared as an opponent to HB 334 and said that we are not addressing the medical malpractice and that he understands and sympathizes with anybody who is sued. He thinks the form is in the Insurance Commissioner's office and does not think it should be here in the legislature.

CONSIDERATION OF HOUSE BILL 374:

Rep. Ramirez of Billings, sponsor of the bill, explained it to the committee and said that it mainly deals with two questions: 1. Who is going to prepare the laws? 2. How is the claim going to be determined?

The doctors cannot offer a contract until the completion of the 1st day of treatment. With hospitals, it cannot be offered until dismissal from the hospital. The patient can revoke it within 90 days of signing the contract. The bill sets up a panel of arbitrators (See Exhibit 4) The reason for having this as an alternative to a court trial is basically that it saves money and time. It saves administrative expense on the insurance companies' side, which makes for lower premiums.

The first proponent of the bill, Gerald Neeley who represents the Montana Medical Assn., said that this type of legislation has been adopted in 35 states. It provides for arbitration. The problem here is we do have arbitration, but case law is that arbitration is excluded. He submitted a review of the law for the committee's consideration. (See Exhibit 5)

The next proponent, Chad Smith, who represents the Montana Hospital Assn. and the American Mutual Alliance, said that they feel that these two bills are compatible and could get the money to the claimant where he is entitled.

An opponent to the bill, Tom Dowling, said that the bill addresses all provisions in just the medical malpractice. To make the arbitration work, you should have all lay people on the panel. This bill tries to modify the jury system. This is not right because the jury system works. The people handle cases fairly. We do have arbitration, and it is recognized. This bill does do away with the Rules of Evidence in Civil Procedure. He said that he does not like that because he does not like the fact that there is no limit on the cost of a suit to a claimant. The fiscal note will create a bureaucracy that won't quit.

At this time Rep. Ramirez closed on the bill by saying that, in respect to evidence, the Rules of Evidence must be followed. This bill provides all expenses of the arbitration panel are going to be on the respondents. The claimant can still get out within 90 days. In regard to the fiscal note, he said that he would like to submit an amendment that any additional costs in the insurance office will be provided for by the professions. There are grounds for reversal

SENATE

 Judiciary

COMMITTEE

4 BILLS *334, 337, 344,*
647 & 782

VISITORS' REGISTER

DATE *3/28/71*

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
<i>James T. Leach</i>	<i>N. Fed. Assn</i>	<i>200, 334 374, 647 782</i>	<i>L</i>	
<i>James T. Leach</i>	<i>N. Fed. Assn</i>	<i>"</i>	<i>✓</i>	
<i>James T. Leach</i>	<i>N. Fed. Assn</i>	<i>"</i>	<i>✓</i>	
<i>James T. Leach</i>	<i>N. Fed. Assn</i>	<i>"</i>	<i>✓</i>	
<i>James T. Leach</i>	<i>N. Fed. Assn</i>	<i>647 782</i>		<i>L</i>
<i>James T. Leach</i>	<i>N. Fed. Assn</i>	<i>200 - 647 374 334 782</i>		<i>✓ ✓ ✓ ✓</i>
<i>Greg Morgan</i>	<i>State Bar of Mont</i>	<i>200 334 374 647 782</i>	<i>✓</i>	
<i>Robert V. Calogre</i>	<i>Cash Co. Bar</i>	<i>334 782</i>		<i>L</i>
<i>John Smith</i>	<i>Mont Hosp Assn</i>	<i>200 334 374 647 782</i>	<i>✓</i>	
<i>Bill Tamm</i>	<i>Mont Hosp Assn</i>	<i>200 334 374 647 782</i>		

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 30, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 9:45 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present except Senator Roberts who was excused to attend another hearing.

EXECUTIVE SESSION

HB 498 - Sen. Turnage offered amendments to this bill for consideration by the committee. Sen. Towe then moved the adoption of all of the amendments. (See Attach. #1) Sen. Lensink voted "No" on amendment #9. Other than the one "No" vote on amendment #9, the motion carried unanimously. Sen. Olson then moved that HB 498 as amended BE CONCURRED IN. The motion carried unanimously.

HB 457 - Sen. Olson moved the adoption of the amendments. (See Attach. #2) The motion carried unanimously. Sen. Towe then moved that HB 457 as amended BE CONCURRED IN. The motion carried unanimously.

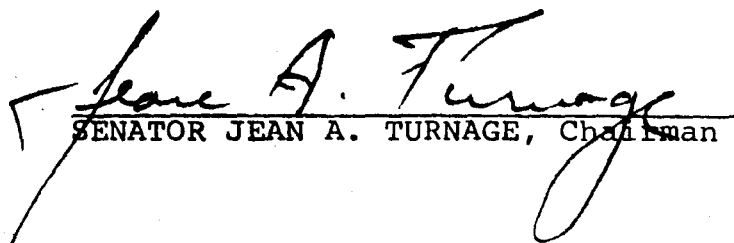
At this time, Senators Towe and Warden were excused to attend other meetings. (10:00 a.m.) Sen. Towe returned as the meeting was delayed.

HB 200 - Sen. Olson moved that HB 200 be tabled. The motion carried unanimously.

HB 782 - Sen. Regan moved that HB 782 BE NOT CONCURRED IN. The motion carried with Senators Lensink and Olson voting "No". The vote was 5 - 2 with Towe, Turnage, Murray, Regan and Warden voting "Yes". Sen. Warden's vote on this bill was obtained during the afternoon session of the Senate as she was excused from this meeting before this vote. Sen. Roberts was also excused during this meeting.

HB 334 - Sen. Lensink moved to strike section 3, subsection (2), and section 4, following "filed". The motion carried unanimously. (The committee will act on this bill at the meeting on 3/31/77.)

There being no further business before the committee at this time, the committee adjourned at 11:05 a.m..


SENATOR JEAN A. TURNAGE, Chairman

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 31, 1977

The meeting of this committee was called to order on the above date by Sen. Roberts, Vice-Chairman, at 9:45 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All committee members were present except Senator Turnage who was excused to attend another hearing. He returned to this meeting at 10:15 a.m..

EXECUTIVE SESSION

HB 251 - this bill was discussed by the committee as to whether people committing DWI's are alcoholics or not. Sen. Towe moved the adoption of the amendments which are attached. (See Attach. #1) The motion carried unanimously. He then moved that HB 251 as amended BE CONCURRED IN. The motion carried unanimously. Without objection, it was authorized to insert the words "except as otherwise provided".

HB 243 - Sen. Towe moved to table HB 243. The motion carried unanimously.

HB 356 - Sen. Lensink moved to amend section 1, page 1, line 15 following "DRIVING" by striking "WHILE INTOXICATED" and inserting "under the influence of alcohol or drugs"; and to amend the title in lines 5 and 6, following "FOR" by striking "A TRAFFIC LAW VIOLATION: and inserting "DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS". The motion carried unanimously. Sen. Towe then moved that HB 356 as amended BE CONCURRED IN. The motion carried unanimously.

At this time, Senator Turnage, who had returned and again assumed the chair, assigned the following bills to be carried on 2nd Reading:

Sen. Towe - HB 164 and 251
Sen. Regan - HB 567 and 326
Sen. Murray - HB 280
Sen. Lensink - HB 457 and 356

Sen. Turnage will carry HB 498 when it is on 2nd Reading.

HB 334 - Sen. Lensink moved that HB 334 as amended BE CONCURRED IN. The motion carried on a vote of 5 - 3 with Senators Warden, Roberts and Regan voting "No". (The amendment was made on 3/30/77 and is in the Minutes for that date)

HB 761 - Sen. Towe moved to reconsider previous action of the committee on this bill. The motion carried unanimously. He then moved that HB 761 be laid on the table. The motion carried unanimously.

April 2, 1977

SENATE
STANDING COMMITTEE REPORT
Committee on Judiciary

That House Bill No. 334, third reading, be amended as follows:

1. Amend page 2, section 3, line 6.

Following: ", "

Strike: "at least 45 days"

2. Amend page 2, section 4, lines 8 through 12.

Following: line 7

Strike: Section 4 in its entirety

HOUSE BILL NO. 334
INTRODUCED BY MOORE

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and general damages sought to be recovered:

(1) before a default may be taken; or

(2) in the event an answer is filed, at least 45 days
prior to the date set for the trial.

~~SECTION 4. PERMISSIVE DELIVERY OF STATEMENT. A COPY
OF THE STATEMENT SETTING FORTH THE NATURE AND AMOUNT OF
DAMAGES BEING SOUGHT MAY BE DELIVERED TO THE DEFENDANT AT
THE TIME OF SERVICE OF THE SUMMONS AND COMPLAINT, BUT MAY
NOT BE FILED FOR 20 DAYS AFTER THE COMPLAINT IS FILED.~~

-End-

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OF MONTANA

SENATE JOURNAL
OF THE
Forty-Fifth Legislature
OF THE
STATE OF MONTANA

VOLUME III

**Held in Helena, the Seat of Government of Said State,
Commencing in Regular Session January 3, 1977, and
Ending April 19, 1977.**

W. GORDON McOMBER
President of the Senate

Nancy Aagenes
Secretary of the Senate

Judy Pratt
Journal Clerk

**PUBLISHED BY
THE MONTANA LEGISLATIVE COUNCIL**

Smith, R. Smith, Stephens, Thiessen, Thomas, Towe, Turnage, Watt, Mr.
President.
Total 41

Noes: Hager, Mehrens, Story.
Total 3

Excused: Devine, McCallum.
Total 2

Absent or not voting: Goodover, Mathers, Norman, Warden.
Total 4

HB 213 be not concurred in.

Thereupon, the Adverse Committee Report was adopted by the following
roll call vote:

Ayes: Aber, Boylan, Dover, Dunkle, Etchart, Fasbender, Flynn, Galt,
Goodover, Graham, Hager, Hazelbaker, Himsl, Jergeson, Kolstad,
Lensink, Lockrem, Lowe, Manley, Manning, Murphy, Murray, Nelson,
Olson, Roskie, E. Smith, Stephens, Story, Thiessen, Thomas, Turnage, Mr.
President.
Total 32

Noes: Bergren, Blaylock, Brown, Healy, Lee, Mehrens, Peterson,
Rasmussen, Regan, Roberts, R. Smith, Towe, Watt.
Total 13

Excused: Devine, McCallum.
Total 2

Absent or not voting: Mathers, Norman, Warden.
Total 3

REPORTS OF SELECT COMMITTEES

JOINT CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL NO. 334

(Report No. 1, April 13, 1977)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Joint Conference Committee on Senate Amendments to House
Bill No. 334, met April 13, 1977, and considered:

Senate Committee on Judiciary Amendments dated April 2, 1977, and
recommend as follows:

Having had under consideration Senate Committee on Judiciary
Amendments dated April 2, 1977,

That the Senate recede from amendment nos. 1 and 2, reading as fol-
lows:

1. Amend page 2, section 3, line 6.

Following: “,”

Strike: “at least 45 days”

2. Amend page 2, section 4, lines 8 through 12.

Following: line 7

Strike: section 4 in its entirety

And, that the Joint Conference Committee Report on Senate Amend-
ments to House Bill No. 334 be adopted.

HOUSE BILL NO. 334

INTRODUCED BY MOORE

A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING THE PLEADING
OF DAMAGES IN ACTIONS FOR PERSONAL INJURY OR WRONGFUL
DEATH."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Claim not to be stated. In an action for
the recovery of money or damages for personal injury or
wrongful death, the amount thereof may not be stated in the
claim for relief, whether an original claim, counterclaim,
cross-claim, or third party claim.

Section 2. Request for statement of claim. When an
action is filed in the district court to recover damages for
personal injury or wrongful death, the parties against whom
the action is brought may at any time request a statement
setting forth the nature and amount of damages being sought.
The request shall be filed and served upon the claimant, who
shall file and serve a responsive statement as to damages
within 15 days thereafter. In the event that a response is
not served, the party on notice to the claimant who may
petition the court in which the action is pending to order
the claimant to serve a responsive statement.

Section 3. Claim made in certain circumstances. If no

request is made for such a statement setting forth the
nature and amount of damages being sought, the claimant
shall give notice to the defendant of the amount of special
and general damages sought to be recovered:

(1) before a default may be taken; or

(2) in the event an answer is filed, ~~at least 45 days~~

~~AT LEAST 45 DAYS~~ prior to the date set for the trial.

~~SECTION 4. PERMISSIVE DELIVERY OF STATEMENT. A COPY
OF THE STATEMENT SETTING FORTH THE NATURE AND AMOUNT OF
DAMAGES BEING SOUGHT MAY BE DELIVERED TO THE DEFENDANT AT
THE TIME OF SERVICE OF THE SUMMONS AND COMPLAINT, BUT MAY
NOT BE FILED FOR 20 DAYS AFTER THE COMPLAINT IS FILED.~~

~~SECTION 4. PERMISSIVE DELIVERY OF STATEMENT. A COPY OF
THE STATEMENT SETTING FORTH THE NATURE AND AMOUNT OF DAMAGES
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OF SERVICE OF THE SUMMONS AND COMPLAINT, BUT MAY NOT BE
FILED FOR 20 DAYS AFTER THE COMPLAINT IS FILED.~~

-End-

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HOUSE OF REPRESENTATIVES
AND SENATE

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HB 334